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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,906	03/16/2004	Anthony J. Melkent	5074A-000010/DVB	3395
27572 7590 01/10/2008 HARNES, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER GETTMAN, CHRISTINA DANIELLE	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 01/10/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/801,906	Applicant(s) MELKENT ET AL.	
	Examiner Christina D. Gettman	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 20-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 39-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :06/21/2004,09/29/2004,09/20/2006.

DETAILED ACTION

Election/Restrictions

Claims 20-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 9, 2007.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: recited what the frame is removably coupled to. There is no structure to which the frame is removably coupled, only that it is relative to the cannulas.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 and 39-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hynes et al. (U.S. Patent No. 6,117,143). Hynes et al. discloses the invention substantially as claimed including an apparatus having a plurality of cannulas (ref. 80 - definition of cannula is being taken to mean a tube with a throughbore; cannulas can also be for inserting into ref. 80 (ref. 144)) coupled to a fixture (ref. 56), at least one trackable marker (col. 7, line 10) associated with the cannulas, a plurality of surgical implement receivers (ref. 54), at least one of the receivers being coaxially aligned with a cannula (throughbores of the receiver and cannula align), the marker being located on a frame (see placement of ref. 94), a peripheral structure coupled to the fixture for moving the cannulas (ref. 102), one of the surgical receivers being a flange, at least one of the plurality of cannulas individually adjustable to vary its angular position (by adjusting the angle of the articulating arm, the angle of the cannulas can change), the peripheral structure being a handle (ref. 2) and operated by a machine (ref. 102), and the surgical implement being a surgical tool or an implant (ref. 116). In another respect, Hynes et al. also discloses the inventions substantially as claimed including a first fixture having a first configuration, a second fixture having a second configuration, and the cannulas being parallel in the first configuration (the configuration of multiple articulating arms allows for the devices to be placed in any desired orientation). Since Hynes et al. disclose using a ruler (ref. 128) with a cannula (ref. 144) to adjust the depth of the cannula, it would have been obvious to one having ordinary skill in the art to have modified Hynes et al. with a cannula that can vary its length in

order to vary the height at which it accesses the surgical site. It would also be obvious to use different fixtures that have different marker. Having different markers would allow the surgeon to visualize different areas in a different manner, such as with the use of an ultrasound or an MRI. It would be obvious to have a cannula that can vary in diameter in order to allow different size instruments to enter the lumen. The device of Hynes et al. allows for this adjustment because of the set screws that hold the inner elements in place. It would be obvious to use a serrated cannula with the device of Hynes et al. in order to allow the cannula to grip to the sides of the access wound. This also allows for the cannula to stay in place.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hynes et al. as applied to claim 2 above, and further in view of Jacobson (U.S. Patent No. 5,665,095). Hynes et al. discloses the invention substantially as claimed except for the frame being removably coupled by a dove-tail connection. Jacobson teaches a dove-tail connection (ref. 34) for placing a frame assembly. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the connection of Hynes et al. with a dove-tail connection, as taught by Jacobson, in order to couple a frame assembly in alignment with a structure.

Conclusion

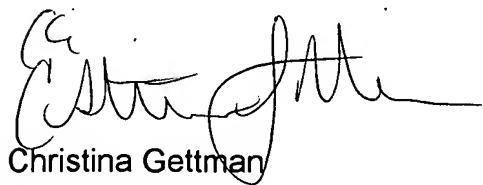
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina D. Gettman whose telephone number is 571-272-3128. The examiner can normally be reached on Monday-Friday 7:15 am to 3:45 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christina Gettman
Art Unit 3734
571-272-3128



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER